IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3666 OF 2003

N.M.Awadhe & Anr. .. Applicants

Versus

K.M.Johny & Anr. .. Respondents

Mr.Shirish Gupte, Senior Advocate with Subodh Desai for applicants

Ms.Shubhada Khot with Karan Mehta for respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th October 2006.

P.C.

. This is an application invoking this

Court's jurisdiction under section 482 of Cr.P.C. to challenge an order dated 11th August 2003 passed by Judicial Magistrate, F.C. Pimpri, Pune in Regular Criminal Case (Enquiry) No.12 of 2002.

2. Applicants before me are the original accused Nos. 14 and 15. They invoked the jurisdiction of the trial court by filing an application, copy of which is at page 157 of paper book. The application prayed that A.C.P., Crime Branch II, Pune City be directed to produce the record of Crime Register No.11 of 2000 dated 6th May 2000 investigated by the said department/branch. The submission is that these documents are necessary for the purpose of present enquiry. The submission was that Crime Branch had categorised the entire dispute as civil dispute and there is an endorsement to this effect in Crime Register No.11 of 2000 dated 6th May 2000. In such circumstances, the complainant is virtually trying to reopen the enquiry and

findings therein. Relevance of the documents, therefore, is that if these documents are summoned or produced, they would be of assistance in deciding as to whether further steps may be taken in accordance with the order of Division Bench of this Court.

3. This application was opposed by the original complainant - first respondent before me and the learned Trial Judge by the impugned order has rejected the same. Learned Trial Judge has observed that the order passed by the Division Bench of this Court in W.P.209 of 2003 and 446 of 2003 is to give reasonable opportunity to both sides. It does not mean that the respondents who are applicants before me can prolong the matter. If it is their case that the complainant has not made out prima facie case, then, they should collect relevant documents independently and produce them on record. Therefore, present application is not maintainable.

4. Ordinarily, this Court would be reluctant to interfere with interlocutory orders. But in the peculiar facts and circumstances of this case and when the order under challenge and all steps in pursuance thereof are stayed by an interim order in the aforesaid petition, it would be appropriate if the application preferred by the applicants before the trial court is granted. All that the trial court would permit the applicants now is to have these documents produced or else it would direct the concerned Crime Branch to produce Crime Register No.11 of 2000 dated 6th May 2000. It is for the parties, thereafter, to demonstrate as to whether these documents are liable to be exhibited on record of the present complaint and such decision to be taken by the trial court after hearing both sides in accordance with law. This order is passed keeping in mind directions of Division Bench in the order dated 10th June 2003 and with a view to

give fair opportunity to both sides as contemplated therein. It is clarified that the application made by the applicants in the trial court is granted in the above terms. The impugned order is set aside. The Crime Branch II, Pune City to produce the record of Crime Register No.11 of 2000 dated 6th May 2000 on record of the Enquiry No.12 of 2002 in the court of J.M.F.C. Pimpri, Pune and thereafter the decision to take the documents on record shall be taken in accordance with law. This order is passed in the presence of the first respondent original complainant who is present in court.

5. It is directed that the A.C.P., Crime Branch II, Pune City should produce these documents/ register within six weeks from today. For a period of six week from today, therefore, the concerned investigating authority not to proceed with the investigation. Rule made absolute in the above terms.

(S.C.Dharmadhikari, J)